



U.S. Department of Justice

Office of the Inspector General

August 25, 2005

**The Honorable John Conyers, Jr.
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515-6216**

Dear Congressman Conyers:

This is in response to two letters you recently sent regarding the Department of Justice's (Department) investigation of the disclosure of information about the identity of an undercover Central Intelligence Agency employee. Specifically, a letter dated July 26, 2005, from you and several other Members of Congress raised concerns that Department attorneys permitted delays that may have resulted in the loss or destruction of evidence related to the investigation, and you asked the Office of the Inspector General (OIG) to investigate the Department's actions. In a second letter dated August 17, 2005, you and Congressman Hinchey asked the OIG to investigate allegations that former Attorney General Ashcroft violated conflict-of-interest rules by failing to timely recuse himself from this investigation.

After careful review, we have concluded that the issues raised in both your July 26 and August 17 letters fall outside the jurisdiction of the OIG. Specifically, the actions of Department attorneys in providing advice to White House lawyers about whether it was permissible to wait 12 hours before notifying staff about the Department's investigation relates to the legal duties of Department attorneys, and therefore these allegations fall within the jurisdiction of the Department's Office of Professional Responsibility (OPR), not the OIG. Similarly, issues concerning former Attorney General Ashcroft's recusal from the investigation, and whether his actions are consistent with applicable standards of professional conduct, also fall within OPR's jurisdiction rather than the OIG's jurisdiction.

As a result, we have contacted the Department's OPR and have forwarded your letters to them for their review and appropriate action.

Please contact me or Deputy Inspector General Paul Martin if you have any questions about this response.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn A. Fine". The signature is fluid and cursive, with the first name "Glenn" being more prominent than the last name "Fine".

Glenn A. Fine
Inspector General

cc: The Honorable Maurice Hinchey
Committee on Appropriations
U.S. House of Representatives

H. Marshall Jarrett, Counsel
Office of Professional Responsibility
Department of Justice

Congress of the United States
Washington, DC 20515

August 17, 2005

The Honorable Glenn A. Fine
Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Fine:

As the Ranking Member of the Committee on the Judiciary and a Member of the Committee on Appropriations, both of which have oversight jurisdiction over the U.S. Department of Justice, we write to request that your Office immediately investigate whether then-Attorney General John D. Ashcroft violated explicit rules on conflicts of interest when he failed to recuse himself from, and in fact was briefed on, the CIA name leak investigation despite his personal connection to Karl Rove, a person of interest to investigators. This investigation would not conflict with the investigation by Special Prosecutor Patrick J. Fitzgerald into the actual leak; instead, it would focus on Mr. Ashcroft's failure to recuse himself at the appropriate time in the case. Furthermore, the investigation into the recusal delay would be a logical extension of the request that you also investigate the Department's failure to comply with proper procedures by not ensuring the preservation of documents and other evidence connected with the leak.¹

Early in the Department's investigation of who had leaked a covert CIA operative's identity to the media, it became clear that Karl Rove, a senior advisor to the President, was receiving public attention as someone who may have been involved in the crime.² We have now learned that, according to law enforcement officials close to the investigation, Mr. Rove failed to disclose to the FBI that he had ever spoken with *Time's* Matthew Cooper, a reporter involved in the case.³ These officials also have indicated that then-Attorney General Ashcroft was personally and privately briefed on the Rove interview.⁴

¹See Letter from Ten Members of Congress to the Honorable Glenn A. Fine, Inspector General, U.S. Dep't of Justice (July 26, 2005).

²See Mike Allen & Dana Milbank, *Bush Vows Action if Aides had Role in Leak*, WASH. POST, Sept. 30, 2003, at A1; Eric Lichtblau & Richard W. Stevenson, *White House Denies a Top Aide Identified an Officer of the CIA*, N.Y. TIMES, Sept. 30, 2003, at A1; Mike Allen & Dana Priest, *Bush Administration is Focus of Inquiry*, WASH. POST, Sept. 28, 2003, at A1.

³Murray Waas, *What Now, Karl? Rove and Ashcroft Face new Allegations in the Valerie Plame Affair*, VILLAGE VOICE, Aug. 13, 2005.

⁴*Id.*

These new disclosures are troubling because, at the time of these events, Mr. Ashcroft had known personal and political connections to Mr. Rove. Mr. Rove was an adviser to Mr. Ashcroft during the latter's political campaigns, earning almost \$750,000 for his services. Mr. Rove also had urged the President to nominate Mr. Ashcroft to be Attorney General after Mr. Ashcroft lost his Senate re-election campaign to the deceased Mel Carnahan. The fact that Mr. Ashcroft eventually recused himself demonstrates that there in fact were conflicts of interest with his continued involvement in the investigation. The fact that he did not recuse himself early on and was briefed on the matter may well have violated ethical rules and guidelines.

Existing law and rules of professional conduct govern when Department attorneys must recuse themselves from particular investigations. Federal law requires the Attorney General to promulgate rules mandating the disqualification of *any* officer or employee of the Justice Department "from participation in a particular investigation or prosecution if such participation may result in a personal, financial, or political conflict of interest, or the appearance thereof."⁵ Pursuant to this requirement, the Department has promulgated regulations stating that:

no employee shall participate in a criminal investigation or prosecution if he has a personal or political relationship with: (1) any person . . . substantially involved in the conduct that is the subject of the investigation or prosecution; or (2) any person . . . which he knows or has a specific and substantial interest that would be affected by the outcome of the investigation or prosecution.⁶

In this case, Mr. Ashcroft would have been prohibited from involvement in the leak investigation under both provisions. His relationships with the President and Mr. Rove consists of both personal and political connections with individuals who might have been the investigation's subjects. At a minimum, his friend, Mr. Rove, had a "specific and substantial interest that would be affected by the outcome" in that his entire political legacy would be tarnished if he were implicated in the leak.

To reiterate the importance of preventing conflicts of interest, the Justice Department has further explicated the guidelines in its U.S. Attorneys' Manual. The Attorneys' Manual provides that:

When United States Attorneys, or their offices, become aware of an issue that could require a recusal in a criminal or civil matter or case as a result of a personal interest or professional relationship with parties involved in the matter, they must contact General Counsel's Office (GCO), EOUSA. The requirement of recusal

⁵28 U.S.C. § 528 (emphasis added).

⁶28 C.F.R. § 45.2.

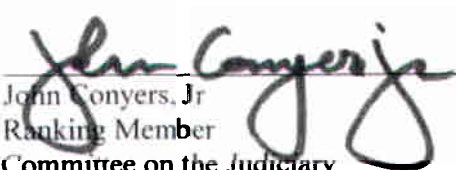
does not arise in every instance, but only where a conflict of interest exists or there is an appearance of a conflict of interest or loss of impartiality.⁷

In the leak investigation, Mr. Ashcroft clearly had a professional relationship with a party involved the matter. His failure to have recused himself earlier may have been an instance of "too little, too late," as the conflict may have impeded the investigation.

Furthermore, rules of professional conduct bar lawyers such as Mr. Ashcroft from matters in which they have conflicts of interest. Because Department attorneys must follow the ethical rules of the bar in which they practice,⁸ as an official at Main Justice he would have been obligated to comply with the District of Columbia Bar's Rules of Professional Conduct. These Rules state that, without consent, a lawyer shall not represent a client if "the lawyer's professional judgment on behalf of the client will be or reasonably may be adversely affected by the lawyer's responsibilities to or interests in a third party or the lawyer's own financial, business, property, or personal interests."⁹ In the instant situation, Mr. Ashcroft clearly had a personal connection to Mr. Rove that would have interfered with proper oversight of the case.

We look forward to hearing whether you will open such an investigation and, if not, the reason for your decision. Please reply to Rep. Conyers at 2142 Rayburn House Office Building, Washington, DC 20515 (tel: 202-225-6504; fax: 202-225-4423) and to Rep. Hinchey at 2431 Rayburn House Office Building, Washington, DC 20515 (tel: 202-225-6335; fax: 202-226-0774).

Sincerely,



John Conyers, Jr.
Ranking Member
Committee on the Judiciary



Maurice Hinchey
Member
Committee on Appropriations

⁷U.S. DEP'T OF JUSTICE, U.S. ATTORNEYS' MANUAL § 3-2.170.

⁸28 U.S.C. § 530B.

⁹DISTRICT OF COLUMBIA BAR, RULES OF PROFESSIONAL CONDUCT 1.7(b)(4). The American Bar Association mimics this guideline in Rule 1.7 of its own Model Rules of Professional Conduct. See AMERICAN BAR ASSOCIATION, MODEL RULES OF PROFESSIONAL CONDUCT 1.7(a)(2).

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ONE HUNDRED NINTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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July 26, 2005

JOHN CONYERS, JR., Michigan
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The Honorable Glenn A. Fine
Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue, NW, Suite 4706
Washington, DC 20530

Dear Inspector General Fine:

We write to request that you immediately commence an investigation of the Department of Justice's handling of the investigation of the leak of the identity of a covert CIA operative's identity by high-ranking Administration officials. Press reports and other information obtained by House Judiciary Committee Democrats appear to demonstrate that on at least two separate occasions, DOJ personnel acted to permit delays in the investigation, which may have resulted in the loss or destruction of critical evidence.

First, over this past weekend we learned that then-White House Counsel Alberto Gonzales received what appears to be a "heads-up" about the commencement of the investigation from Justice Department officials in the evening of September 29.¹ Through White House staff, he asked DOJ personnel if it was permissible to wait an additional 12 hours to notify the White House staff of the investigation and presumably direct the staff to preserve all relevant documents and records relating to the inquiry. According to Mr. Gonzales, "Department of Justice lawyers" gave their assent to this delay:

I specifically had our lawyers go back to the Department of Justice lawyers and ask them, "Do you want us to notify the staff now, immediately or would it be okay to notify the staff early in the morning?" And we were advised, go ahead and notify the staff early in the morning, that would be okay.²

¹Frank Rich, "Eight Days in July," *The New York Times*, June 24, 2005, at 13. See also, Dafna Linzer, "Bush Aide Learned Early of Leaks Probe," June 25, 2005, at A02.

²*Face the Nation* (CBS television broadcast, June 24, 2005).

Notwithstanding this request, Mr. Gonzales informed the White House Chief of Staff Andrew Card about the investigation. It is not yet known who the White House Chief of Staff advised about the investigation prior to the Counsel's official notification twelve hours later.

For example, this twelve hour head start is a clear and troubling departure from Department practice. When White House contacts with Enron became essential to that investigation, then-Deputy Attorney General Christopher Wray immediately directed the White House to preserve all e-mails, memos, notes, letters and other documents from Enron employees or "any individual acting officially or unofficially, directly or indirectly on behalf" of the company.³ Less than an hour after receiving the directive, Mr. Gonzales issued an "administrative alert" directing officials to comply.⁴

Second, we previously received information about a similar delay with respect to the original criminal referral of this matter by the Central Intelligence Agency. In a letter to Ranking member Conyers, dated January 30, 2004 (enclosed), the CIA describes repeated delays and inaction by the Department. The Agency notes that Executive Order 12333 requires the Central Intelligence Agency to report to the Attorney General "possible violations of criminal law." Pursuant to this requirement, according to the letter, the CIA did the following:

- On July 24, 2003, a CIA attorney left a phone message for the Chief of the Counterespionage Section of the Department of Justice noting his concern with recent stories apparently exposing the identity of Valerie Plame, an employee of the agency working under cover. There was apparently no response from the Department.
- On July 30, 2003, the CIA reported to the Criminal Division of the DOJ a possible violation of criminal law concerning the unauthorized disclosure of classified information. There was apparently no response from the Department.
- The CIA again transmitted their concerns by facsimile on September 5, 2003.
- On September 16, in accordance with the Agency's standard practice in these matters, the CIA advised the Department that it had completed its own investigation of the matter, provided a memorandum setting forth the results of

³Ron Hutcheson, "U.S. Boosts Its Inquiry into Enron; White House Records Are Sought," *Milwaukee Journal Sentinel*, February 2, 2002, at A01.

⁴*Id.*

The Honorable Glenn A. Fine
July 26, 2005
Page Three

the investigation and requested that the FBI undertake a criminal investigation of the matter.

- Finally, on September 29, 2003—sixty-seven days after the initial concerns were expressed by CIA employees—the DOJ responded and advised the CIA that the Counterespionage Division had requested that the FBI initiate an investigation of this matter.

Thus, it appears, that not only did DOJ personnel countenance a 12-hour delay in notifying White House staff to preserve all records (while the White House Chief of Staff was given a heads up of the existence of the investigation), but that the DOJ also appears to have ignored repeated entreaties from the CIA to initiate a law enforcement investigation into this matter several months before hand. We would therefore urge you to examine the extent that this course of conduct and other delays by the Department are consistent with standards of prosecutorial conduct and integrity.

Please respond to us at your earliest convenience through the Judiciary Committee Minority Office, 2142 Rayburn House Office Building, Washington, DC 20515.

The Honorable Glenn A. Fine
July 26, 2005
Page Four

Sincerely,

Philomys.
Chris Van Hollen
Robert Work
N

William Delahous

John L.
Jared Nadler
Marty Mink
Dick Boucher
Bobby Loef -

Central Intelligence Agency



Washington, D.C. 20505

30 January 2004

The Honorable John Conyers, Jr.
Ranking Democratic Member
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Dear Mr. Conyers:

Thank you for your letter of 29 September 2003 to the Director of Central Intelligence (DCI) regarding any contacts the Central Intelligence Agency (CIA) has had with the Department of Justice (DoJ) to request an investigation into the disclosure earlier that year of the identity of an employee operating under cover. The DCI has asked me to respond to your letter on his behalf.


Executive Order 12333 requires CIA to report to the Attorney General "possible violations of criminal law." In accordance with Executive Order 12333 on 24 July 2003, a CIA attorney left a phone message for the Chief of the Counterespionage Section of DoJ noting concern with recent articles on this subject and stating that the CIA would forward a written crimes report pending the outcome of a review of the articles by subject matter experts. By letter dated 30 July 2003, the CIA reported to the Criminal Division of DoJ a possible violation of criminal law concerning the unauthorized disclosure of classified information. The letter also informed DoJ that the CIA's Office of Security had opened an investigation into this matter. This letter was sent again to DoJ by facsimile on 5 September 2003.

By letter dated 16 September 2003, and in accordance with standard practice in such matters, the CIA informed DoJ that the Agency's investigation into this matter was complete, provided DoJ a memorandum setting forth the results of that investigation, and requested that the Federal Bureau of Investigation (FBI) undertake a criminal investigation of this matter. In a 29 September 2003 letter, DoJ advised that the Counterespionage Section of DoJ had requested that the FBI initiate an investigation of this matter.

The Honorable John Conyers, Jr.

I hope the information set forth in this letter provides the assistance you were seeking.

Sincerely,


for Stanley M. Moskowitz
Director of Congressional Affairs

F. JAMES SENESENRENNER, JR., Wisconsin
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ONE HUNDRED EIGHTEEN CONGRESS

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September 29, 2003

JOHN CONYERS, JR., Michigan
RANKING MINORITY MEMBER

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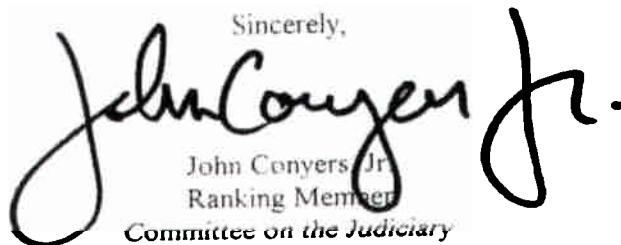
The Honorable George J. Tenet
Director of Central Intelligence
Washington, DC 20505

Dear Mr. Director:

I am enclosing a letter I sent to the Attorney General today, requesting that he appoint an outside special counsel to investigate the leaking of the undercover status of the wife of Ambassador Joseph Wilson. I believe this matter presents grave and serious allegations. To assist me in my oversight of the Justice Department, I write to ask that you provide me the dates and descriptions of any contacts you are aware of that your Agency has had, formally or informally, with the Justice Department to request an investigation of this matter and any responses you have received, formally or informally, thereto. Should you have any questions or concerns about this request, please contact me through Perry Apfelbaum or Ted Kalo with my Judiciary Committee staff (phone: 202-225-6504, fax: 202-225-4423), 2142 Rayburn House Office Building, Washington, DC, 20515.

Thank you for your assistance in this matter.

Sincerely,



John Conyers Jr.
Ranking Member
Committee on the Judiciary

Enclosure

F. JAMES CONSENBRENNER, JR., Wisconsin
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ONE HUNDRED EIGHTH CONGRESS

Congress of the United States

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LINDA T. SANCHEZ, California

September 29, 2003

The Honorable John D. Ashcroft
Attorney General of the United States
U. S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Attorney General:

I am writing to formally request that the U. S. Department of Justice appoint an outside special counsel to take over the investigation of the leaking of an undercover CIA operative's name to columnist Robert Novak and to request that we meet or that you set up a staff briefing at the earliest opportunity to discuss these matters. According to the *Washington Post*, a senior White House official has indicated that two top White House aides called six reporters and revealed that Ambassador Joseph Wilson's wife was an undercover CIA operative. The motive for this criminal action has been described as "revenge" for Wilson's revelations that the State of the Union address contained fraudulent information about Saddam Hussein and Weapons of Mass Destruction.

Under the Department's regulations, the Attorney General is required to appoint a special counsel when (1) a "criminal investigation of a person or matter is warranted," (2) the investigation "by a United States Attorney's Office or litigating Division of the Department of Justice would present a conflict of interest for the Department," and (3) "it would be in the public interest to appoint an outside Special Counsel to assume responsibility for the matter." 28 C.F.R. § 600.1 (2002).

There can be no doubt that this matter presents a clear conflict of interest for you and your Department to investigate. When top Administration officials are involved in such a grave and serious matter that would almost certainly damage the credibility of this Administration, it goes without saying that your office is ill equipped to carry out such an investigation. It has also been reported that one of the criminal leakers of this information was allegedly Karl Rove, the President's top political advisor, and the architect of his reelection campaign. It should be noted that Rove was reportedly fired from the campaign of President George H. W. Bush over a leak to

The Honorable John D. Ashcroft
September 29, 2003
Page 2

Robert Novak. "Why Are These Men Laughing?," Ron Suskind, *Esquire Magazine*, January 2003. It has also been reported that Mr. Rove was the driving force behind your nomination as Attorney General. "How the Religious Right Pushed for Ashcroft's Nomination," David Johnston and Neil A. Lewis, *New York Times*, January 7, 2001.

There appears to be little doubt that persons in the White House communications or political team or other high ranking political officials were the sources of this information. This in turn raises further questions that warrant an objective investigation by a special counsel. Such White House officials would not be privy to the names of undercover CIA operatives because such information is usually disclosed only to those with appropriate clearances and only on a "need to know" basis. Who disclosed this information to the White House political team or communications team and why did they do it? Such a disclosure would represent a violation of that individual's Classified Information Nondisclosure Agreement and, a violation of a number of federal statutes.

There also can be no doubt that this case presents allegations of criminal wrongdoing of the most serious kind, essentially amounting to treason. Under 50 USC § 421(a), the disclosure of the name of a covert agent is punishable by up to ten years in prison. As the President's father said in 1999, "I have nothing but contempt and anger for those who betray the trust by exposing the names of our sources. They are, in my view, the most insidious of traitors." Dedication Speech George Bush Center for Intelligence, April 16th, 1999. There can be no doubt that this matter placed the lives of Ambassador Wilson, his wife, and her contacts at risk.

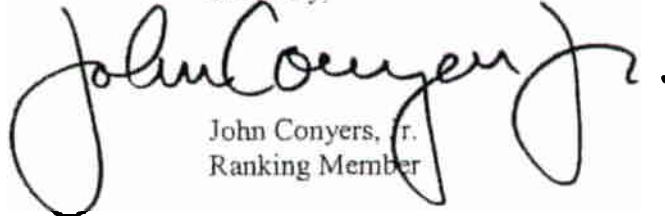
I am concerned that your Department has been dragging its feet in this matter. Reports indicate that CIA officials approached your office requesting an investigation of this matter within days of Mr. Novak's July 14 column. Given that your Department has taken no discernible action in this ensuing two months, there is the appearance that this investigation is being stonewalled. This impression is bolstered by the fact that you have been asked, on a number of occasions, to appoint special counsels to investigate allegations of criminal wrongdoing by high ranking Administration officials, and have in every instance declined to do so. From Enron to Westar, you have refused to take the most basic steps to ensure that there is an impartial investigation of these matters. It should also be noted that, in all of these matters in which you assured the public that your Department could appropriately investigate officials of its own Administration, you have taken no actions against any such officials.

I look forward to promptly hearing whether you will appoint a special counsel and, if not, the reason for your decision. Should you have any questions or concerns about this request,

The Honorable John D. Ashcroft
September 29, 2003
Page 3

please feel free to contact me through Perry Apfelbaum or Ted Kalo with my Judiciary Committee staff (tel. 202-225-6504, fax 202-225-4423), 2142 Rayburn Building, Washington, D.C., 20515.

Sincerely,

A handwritten signature in dark ink, reading "John Conyers, Jr.", with a large, stylized flourish at the end.

John Conyers, Jr.
Ranking Member

cc: The Honorable F. James Sensenbrenner, Jr.
Chairman
U. S. House Committee on the Judiciary

The Honorable Will Moschella
Assistant Attorney General
Office of Legislative Affairs